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OFFICE OF PETITIONS

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In re Patent No. 7,678,364	: DECISION ON APPLICATION FOR
Issued: March 16, 2010	: PATENT TERM ADJUSTMENT and
Application No. 09/822,716	: NOTICE OF INTENT TO ISSUE
Filed: March 30, 2001	: CERTIFICATE OF CORRECTION
Dkt. No.: 2685.1003 US3	:

This is a decision on the application for patent term adjustment timely filed on March 9, 2010. The application for patent term adjustment asserts that the patent is entitled to a patent term adjustment of 1,974 days. This matter is being properly treated pursuant to 37 CFR 1.705(d).

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.**

The above-identified application matured into U.S. Pat. No. 7,678,367 on March 16, 2010. The patent issued with a patent term adjustment of 1,680 days. The instant application for patent term adjustment was timely filed March 9, 2010. Patentees argue that the patent is entitled to an overall patent term adjustment of 1,974 days.

The calculation of adjustment has been carefully reviewed, along with the arguments presented by patentees. Herein follows the calculation of adjustment.

The patent is entitled to an overall adjustment of 1,800 days.

The patent is entitled to an adjustment of 57 days pursuant to 37 CFR 1.702(a)(1).

The patent is not entitled to 16 days of adjustment in connection with the appeal brief filed on December 27, 2004 because the brief was defective, as set forth in the Office communication mailed December 23, 2005. Accordingly, the patent is not subject to adjustment per 37 CFR 1.702(a)(2) and 1.703(a)(4).

The application is not entitled to 152 days of adjustment in connection with the mailing of the Notice of Allowance on November 23, 2009. The decision by the Board was mailed on February 24, 2009. The non-final Office action was mailed on April 24, 2009. Thus, the patent is not

entitled to adjustment pursuant to 37 CFR 1.702(a)(3) and 1.703(a)(5) as an action pursuant to 35 USC 132 was mailed within four months of the mail date of the Board decision.

The patent is entitled to an adjustment of 2,177 days pursuant to 37 CFR 1.702(b). The adjustment commenced March 31, 2004 and ended March 16, 2010.

The period of adjustment under 37 CFR 1.702(b) does not include the number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences. See, 37 CFR 1.702(b)(4) and 1.703(b)(4).

Accordingly, the period of adjustment of 2,177 days under 37 CFR 1.702(b) does not include 117 days, from October 27, 2003, the date that the first Notice of Appeal was filed, to February 20, 2004, the date that the non-final Office action in response thereto was mailed.

The period of adjustment under 37 CFR 1.702(b) also does not include 1,669 days, from November 26, 2004, the date that the second Notice of Appeal was filed, to February 24, 2009, the date that the decision by the Board was mailed.

The patent is entitled to an adjustment of 1,552 days pursuant to 37 CFR 1.703(e). The adjustment commenced November 26, 2004 and ended February 24, 2009.

The period of applicant delay totals 317 days. Patentees have acknowledged the period of reduction totaling 270 days. However, the adjustment is properly reduced an additional 47 days pursuant to 37 CFR 1.704(b) in connection with the reply filed September 24, 2001 in response to the Notice to File Missing parts mailed May 8, 2001. The reduction commenced August 9, 2001 and ended September 24, 2001.

In view thereof, the patent is entitled to an overall adjustment of 1,800 days (57 days under § 1.702(a) + 2,177 days under § 1.702(b) + 1,552 under § 702(e) – 1552 days under § 1.702(b)(4) – 117 days § 1.702(b)(4) – 317 days of applicant delay under § 1.704)).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under

35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 1,800 days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,678,364

DATED : March 16, 2010

DRAFT

INVENTOR(S) : Edwards, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1,680 days

Delete the phrase "by 1,680 days" and insert – by 1,800 days--